

NTSB Order No. EM-194

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 18th day of November, 2002

Appellant.

Docket ME-171

<sup>1</sup>Board Order No. EM-193 reversed a decision that suspended the appellant's pilot license because he did not sound a danger signal prior to his vessel's collision with another ship. The petition argues that the Board should have deferred to the Coast Guard's view that a signal was required under COLREG Rule 34(d), which we found inapplicable. Assuming, arguendo, that the Board's statutory authority to review Coast Guard decisions in a case of this type embodies the principles of deference that the courts employ in their review of agency decisionmaking, we do not believe that an issue of deference arises where, as in this case, the Coast Guard's view that the rule should apply does not reflect an interpretation supported by the rule's own description of its coverage, but, instead, essentially promotes a judgment that the rule should apply notwithstanding its literal terms.

49 C.F.R. Section 821.50(b), the deadline for filing such a petition is 30 days after service of the Board's decision.<sup>2</sup> In the absence of extraordinary circumstances excusing the untimeliness of a petition, it will not be accepted out of time.<sup>3</sup> See Section 821.11.

**ACCORDINGLY, IT IS ORDERED THAT:**

The petition for reconsideration is dismissed.

HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order. CARMODY, Acting Chairman, did not concur and submitted the following dissenting statement.

The Notation Memorandum recommends that the Board not reach the substantive issue and deny the reconsideration request because it was not filed within the applicable 30-day deadline. I disagree. The filing was done within 34 days. I am not content to waive this reconsideration request so easily on an issue which the Coast Guard believes is important to maritime safety.

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<sup>2</sup>Requests for reconsideration filed in merchant marine cases must comport with our Rules of Practice in aviation proceedings. See Commandant v. Mintz, 4 NTSB 1976 (1984).

<sup>3</sup>The appellant, by counsel, filed an opposition to the reconsideration request.